

Department of Marine Resources

NOTICE OF AGENCY RULE-MAKING PROPOSAL

RULE TITLE: Chapter 40 Smelt Regulations and
Chapter 55 Gear Restrictions, sections 20, 60 and 97

CONCISE SUMMARY:

Proposed amendments to the smelt regulations would provide additional conservation measures for smelts, which, since 2004, have been listed as a species of concern from Labrador to New Jersey on the east coast by the National Marine Fisheries Service (NMFS).

The local area restrictions would be repealed and replaced with one set of coastwide rules; the spawning season would be extended by 2 weeks, from June 15 to June 30, based on recent survey data; and the year round method of take would be limited to hand dip net and hook and line with no bag limit outside of the spawning season dates. A provision would be added that prohibits harvesters from walking in tidal streams while fishing to protect the newly spawned smelt eggs, similar to the elver rules in 12 M.R.S. §6575(B)(5). Exceptions to the spawning season dates and limits on the method of take will apply in Washington County. These rules would not change the spawning season limit, which would remain at 2 quarts per day. The allowance to commercially sell smelts taken through the ice by hook and line is unchanged pursuant to 12 M.R.S. §6501(3)(C).

STATUTORY AUTHORITY: 12 M.R.S. §6171

PUBLIC HEARINGS: Tues., Oct. 20, 2009, 6:00pm, UMM, Science Lecture Hall (Rm 102), 9 O'Brien Ave. Machias;
Thurs., Oct. 22, 2009, 6:00pm, Lincoln County Communications Center, Meeting Rm, (lower entrance behind the courthouse), Route 1, Wiscasset

DEADLINE FOR COMMENTS: November 2, 2009

To ensure consideration, comments must include your name and the organization you represent, if any. Please be aware that any risk of non-delivery associated with submissions by fax or e-mail is on the sender.

AGENCY CONTACT PERSON: Claire Enterline (207-633-9566)

Mail Written Comments to: Department of Marine Resources, attn L. Churchill

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E-MAIL: laurice.churchill@maine.gov **TEL:** (207) 633-9584 **FAX:** (207) 633-9579 **TTY:** (207) 633-9500 (Deaf/Hard of Hearing) Hearing facilities: If you require accommodations due to disability, please contact Amanda Beckwith, at (207) 287-7578.

Additional information:

Factors contributing to the overall decline of smelts include spawning habitat degradation, dams and blocked culverts, fishing and acid precipitation. Surveys by the Massachusetts Division of Marine Fisheries have shown a population decline during the past 15-20 years in Massachusetts Bay.

Department data dating back through the 1970's indicates the decline is advancing northerly through Maine and NH. For example, many rivers and streams in Southern Maine that supported spawning populations in the early 1900's do not anymore, including the Kennebec River, the Saco River, and Back Cove in Portland. In the Midcoast and Downeast, small streams that used to support small annual runs may only support runs every few years now. Some of these smaller streams do not support any runs today. Compared to the 1970's there are only a few streams supporting smelt runs left on Mount Desert Island.

The rules would not change the spawning season limit, which would remain at 2 quarts per day. The allowance to commercially sell smelts taken through the ice by hand dip net or hook and line is unchanged pursuant to 12 M.R.S. §6501(3)(C). For reference the definition of hook and line defined in 12 M.R.S. §6001(20) means a single line with no more than 5 hooks, including the commonly called rod and reel and handline. For more biological information select this link:

http://www.nero.noaa.gov/prot_res/CandidateSpeciesProgram/Rainbow%20smelt%20final%20fact%20sheet%20_032107.pdf For a current copy of Chapter 40 Smelt regulations select this link: <http://www.maine.gov/sos/cec/rules/13/188/188c040.doc>

The proposed regulations would impact recreational and commercial harvesters of smelt who fish both during and outside of the spawning season. The proposed amendments would provide greater conservation and enforcement consistency coastwide with the long term goal of protecting and rebuilding the resource, coastwide.

The proposed amendments are listed by section below:

Ch. 40.12 Coastwide rules:

Section A, Restrictions: The year round method of take would be limited to hand dip net and hook and line with no bag limit outside of the spawning season dates. The spawning season would be extended by 2 weeks, from June 15 to June 30, based on recent survey data. A provision would be added that prohibits harvesters from walking in tidal streams while fishing to protect the newly spawned smelt eggs, similar to the elver rules in 12 M.R.S. §6575(B)(5).

Technical corrections would be made in **section (B)(1)** and update citations.

Section (B)(2) would be repealed as this is redundant with 12 M.R.S. §6501 Commercial fishing license, required to commercially fish for smelt; and the exemption for a person to fish for, take, possess, ship, transport or sell smelts provided in §6501(3)(A) when taken by hook and line through the ice.

Ch. 40.07 & 08 would become 40.12(B)(2) Exceptions: The overall proposed restrictions are intended to reduce effort for conservation purposes; however we are allowing a few traditionally fished rivers, which have not yet shown the decreases observed to the south, to continue at this time until more data has been collected. Floating traps and brush weirs in sections 07 and 08 would be

removed and the spawning season January 1 through April 1; to avoid salmon smolt bycatch in each of these areas. Commercial sale or personal take, etc., of smelt is covered by 12 M.R.S. §6501.

Ch. 40.01 Damariscotta Mills: Repeal - this is redundant with Chapter 55.85.

Ch. 40.13 Georges River, Knox County: Repeal - this is covered by Chapter 55.05(D).

Ch. 40.02 - 06, 09 & 10: The repeal of these rules would make the regulations for these areas consistent with the proposed extended spawning season (March 15 – June 30), limit of 2 quarts per day, per person, using only hand dip net or hook and line to take smelts coastwide in accordance with Chapter 40.12.

Ch. 55.20 Sedgwick Harbor: smelts taken by purse seine would be removed for consistency.

Ch. 55.60 Narraguagus River: 12 M.R.S. §4101 was repealed therefore its reference would be removed.

Ch. 55.97 Fishing in the Kennebec River above the Gardiner/Randolph Bridge: This would be clarified to reference the updated regulations in Chapter 40.

Proposed rulemaking – see underlined or ~~deleted~~ text below:

Chapter 40 - Smelt Regulations

40.12 Taking of smelts from the coastal waters of Maine

A. Restrictions

1. It shall be unlawful to fish for or take smelts from the coastal waters by any means other than a dip net or by hook and line as defined by 12 M.R.S. §6001(20).
2. During the period March 15 to June 30, both days inclusive, it shall be illegal to take more than 2 quarts of smelts from the coastal waters of the State. Possession of over 2 quarts per day of smelts during this period on any coastal river, brook, or stream shall be prima facie evidence that the smelts were taken in violation of this regulation.
3. It shall be unlawful to stand in the water of any coastal river, brook, or stream while fishing for smelts.

B. Exceptions

1. Any licensed wholesale seafood or retail seafood dealer licensed pursuant to 12 M.R.S. §6851 or §6852; bait dealer licensed pursuant to 12 M.R.S. §7172; or grocery, restaurant or fish store may possess more than 2 quarts in his/her place of business.
2. Taking of smelts in Washington County between January 1 through April 1, both dates inclusive, in the following areas without any limit on quantity and use of gill nets and bag nets is allowed: East Machias River (East Machias); tidal waters in the Towns of Addison, Cherryfield, Columbia Falls, Harrington, Milbridge, Steuben; and from that part of Chandler River located in the Town of Jonesboro. Outside these dates the restrictions in Chapter 40.12(A) apply.

Chapter 55 - Gear Restrictions

55.20 Use of beam trawls in Sedgwick Harbor, Hancock County

The use of beam trawls or any similar device is prohibited in Sedgwick Harbor, known as Benjamin's River. ~~This section shall not be construed as prohibiting the taking of smelts in the usual manner by the use of purse seines during the time when the use of seines for this purpose is lawful in other waters of the State.~~

55.60 Fishing in Narraguagus River, Washington County

B. This section does not apply to the taking of alewives under section 108-A, nor to the taking of alewives under any other law. ~~This section shall not apply to the taking of smelts under 12 M.R.S.A. §4101.~~ **NOTE: 4101 was repealed**

55.97 Fishing in the Kennebec River above the Gardiner/Randolph Bridge

It shall be unlawful to use any type of net or seine in the tidal waters of the Kennebec River above the Gardiner/Randolph Bridge. This regulation shall not apply to the taking of smelts by hand dip net or hook and line in accordance with DMR regulations Chapter 40. ~~to the taking of bait fish by fishermen who possess a valid license and special permit to do so from the Commissioner of Marine Resources.~~

Chapter 40 - Smelt Regulations – continued (current Chapter 40)

~~40.01 Taking of smelts at Damariscotta Mills~~

~~It shall be unlawful to take salt water smelts from the waters above the so-called Fish Stream Bridge at Damariscotta Mills during the months of March, April and May of each year.~~

~~40.02 Taking of smelts in Eastern River~~

~~The Eastern River in the Town of Dresden is closed to all smelt fishing, except by hook and line.~~

~~40.03 Taking of smelts in Cathance River~~

~~No smelts shall be taken or fished for in any way other than by hook and line, except in nets of 2-inch mesh or more, in the tidal waters of Cathance River, in the Village of Bowdoinham, Sagadahoc County.~~

~~40.04 Taking of smelts in Sasanoa River~~

No smelts shall be taken or fished for in the tidal waters of the Sasanoa River, except by hook and line, starting at the western point of Sasanoa Bluff on the west and continuing easterly to the eastern point of Hell Gates on the east.—

40.05 ~~Taking of smelts in Abagadasset River~~

~~The Abagadasset River, in the Town of Bowdoinham, is closed to all smelt fishing except by hook and line.—~~

40.06 ~~Taking of smelts in the Passagassawaukeag River~~

~~It shall be lawful to fish for salt water smelts commercially in the Passagassawaukeag River, Waldo County, from the head of the tide to 2,000 feet below the Memorial Bridge.—~~

40.07 ~~Taking of smelts in East Machias River~~

~~It shall be lawful for any person to take smelts, without any limit on the catch, by the use of floating traps, gill nets or bag nets in the tidewaters of the East Machias River in East Machias from October 1st to April 30th each year, with the right to sell smelts on the open market.—~~

40.08 ~~Taking of smelts in Addison, Columbia Falls, Harrington, Cherryfield, Milbridge and Steuben~~

~~A. Gear restrictions~~

- ~~1. Notwithstanding Chapter 40.12 (A), smelts may be taken without regard to limits on quantity from the tidal waters of the Towns of Addison, Columbia Falls, Cherryfield, Harrington, Milbridge and Steuben and from that part of Chandler River located in the Town of Jonesboro, all in the County of Washington, in the following manner: By hook and line, gill nets, hand dip nets, brush weirs and bag nets, from March 15th to April 10th of each year.—~~

~~B. Sale of smelts~~

~~A holder of a Commercial Fishing License may sell and offer for sale within this State and to transport outside the State all smelts legally caught within said tidal waters.—~~

40.09 ~~Taking of smelts in the Penobscot River~~

~~A. Gear restriction and sale of smelts~~

~~Between the 1st day of October and the 1st day of May, it shall be lawful to commercially fish for and take smelts without regard to limits on quantity from the tidal waters of the Penobscot River, North Branch of the Marsh River downstream of the footbridge in Frankfort Village, South Branch of the Marsh River downstream of the Rte #174 bridge, on Carley Brook, downstream of the Bangor and Aroostook Railroad Bridge on Colson Stream in Prospect, and downstream of a yellow painted post located approximately 300 yards below the head-of-tide dam on Souadabscook Stream in Hampden. From May 1st to June 15th, daily limits and harvest methods shall be in accordance with Regulation 40.12. It shall be lawful to take smelts commercially without regard to limits on quantity from all other tributaries of the Penobscot River from the 1st day of October to the 15th day of March. From March 15th to June 15th, daily limits and harvest methods shall be in accordance with Regulation 40.12.—~~

~~B. Fishing above Joshua Chamberlain Bridge~~

~~It shall be unlawful to take smelts from the tidal waters of the Penobscot River and its tributaries above the Joshua Chamberlain Bridge except by hook and line or hand dip net. No more than two (2) quarts of smelts per person per day may be taken or possessed from these waters.—~~

40.10 ~~Taking of smelts in the Town of Surry~~

~~A. Closed season~~

~~It is unlawful to take or to fish for smelts in any of the tidal waters in the Town of Surry, Hancock County, except by hook and line. During the periods each year from April 1st to June 15th only 4 quarts of smelts may be taken during any one day.—~~

~~B. Penalty~~

~~Whoever violates any provision of this regulation shall be subject to a fine of not less than \$25.00 nor more than \$500.00 or by imprisonment for not more than 90 days, or by both.—~~

40.11 ~~Taking of smelts in Bagaduce River~~

~~A. Closed Season~~

- ~~1. For conservation purposes there will be a closed season from March 15 to June 15 of each year to the taking of sea-run smelts in all brooks and _____ tributaries of the Bagaduce River, upstream of the North Brooksville-Sedgwick Bridge.—~~
- ~~2. Exception: Camp Stream in Sedgwick shall be open to the taking of smelts in accordance with Regulation 40.12 (Taking of Smelts from the Coastal Waters of Maine).—~~

~~B. Penalty~~

~~Whoever violates any provision of this regulation shall be subject to a fine of not less than \$25.00 nor more than \$500.00 or by imprisonment for not more than 90 days, or by both.—~~

40.12 ~~Taking of smelts from the coastal waters of Maine~~

- ~~A. Method and amount. From March 15th to June 15th, both days inclusive, it shall be unlawful to fish for or take smelts from the coastal waters by any means other than a hand dip net operated by one man or by angling with a hook and line or to take or possess more than 2 quarts of smelts in one day. During the period March 15th to June 15th, both days inclusive, possession of more than 2 quarts of smelts on any coastal stream, brook, or river not exempted by further regulation shall be prima facie evidence that the smelts were taken in violation of this regulation.—~~

~~B. Exceptions~~

- ~~1. Any licensed wholesale seafood or retail seafood dealer licensed under Sections 6851 or 6852; bait dealer licensed under Section 7172; or grocery, restaurant or fish store may possess more than 2 quarts in his place of business.—~~
- ~~2. The holder of a current Commercial Fishing License may take smelts from areas, during seasons, and by methods which are authorized by further regulation of the commissioner. The failure to exhibit the Commercial Fishing License immediately upon request of a Marine Patrol Officer or Game Warden shall be prima facie evidence that the person possessing the smelts is not excepted under this paragraph.—~~

40.13 ~~Use of purse, drag or stop seines in Georges River, Knox County~~

~~SEE 55.05 (D).—~~